

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FIRST QUALITY TISSUE, LLC,

Plaintiff,

v.

IRVING CONSUMER PRODUCTS LIMITED
and IRVING CONSUMER PRODUCTS, INC.,

Defendants.

C.A. No. 19-428-RGA

JURY TRIAL DEMANDED

**PLAINTIFF FIRST QUALITY TISSUE, LLC'S
DAUBERT MOTION TO EXCLUDE EXPERT TESTIMONY**

PLEASE TAKE NOTICE that Plaintiff First Quality Tissue, LLC, by their undersigned counsel, respectfully move this Court to exclude expert testimony offered by Defendant Irving Consumer Products Limited pursuant to the standards set forth in *Daubert v. Merrell Dow Pharmas. Inc.*, 509 U.S. 579 (1993) as follows:

1. Plaintiff moves to exclude Dr. Steven Keller's expert testimony advocating and using an improper claim construction of "an outer surface."
2. Plaintiff moves to exclude Dr. Steven Keller's expert testimony discussing so-called "optical" or "non-contact" profilometry.
3. Plaintiff moves to exclude Dr. Steven Keller's expert testimony that merely rubber-stamps attorney argument and is predicated on materials he admitted to never reviewing.
4. Plaintiff moves to exclude Mr. Dale Kavalew's expert testimony regarding testing of prior art that is predicated on unreliable data and analysis.

5. Plaintiff moves to exclude Dr. James Malackowski's expert testimony regarding non-comparable licenses.

6. Plaintiff moves to exclude Dr. James Malackowski's expert testimony regarding the unsupported use of a denser embossing pattern as a supposed non-infringing alternative.

The grounds for this motion are fully set forth in Plaintiff's Opening Brief in Support of this motion, filed concurrently herewith.

Dated: March 19, 2021

FISH & RICHARDSON P.C.

/s/ Warren Keith Mabey, Jr.

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1.1

I hereby certify, pursuant to D. Del. LR 7.1.1, counsel for Plaintiff telephonically met and conferred with counsel for Defendant, reasonable efforts have been made to reach agreement with opposing counsel on the matters set forth in the foregoing Motion, and that no agreement could be reached.

/s/ Warren Keith Mabey, Jr.

Warren Keith Mabey, Jr. (#5775)